

Senate Bill No. 777

Passed the Senate September 4, 2003

Secretary of the Senate

Passed the Assembly August 21, 2003

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2003, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 1102.5 and 1106 of, and to add Sections 1102.6, 1102.7, 1102.8, and 1102.9 to, the Labor Code, relating to whistleblowers.

LEGISLATIVE COUNSEL'S DIGEST

SB 777, Escutia. Whistleblowers.

Existing law prohibits employers from making, adopting, or enforcing a policy that prevents an employee from disclosing violations of a state or federal statute, or a violation or noncompliance with a state or federal regulation to a government or law enforcement agency, or from retaliating against an employee who makes a disclosure. It makes a violation punishable as a misdemeanor.

This bill would extend these protections to employees who report a violation of a state or federal rule, who refuse to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation, or who exercised these rights in former employment. This bill would prohibit an employer from retaliating against an employee for exercising any of these rights, including those provided under existing law, would add an additional civil penalty for violations, and would establish the evidentiary burdens of the parties participating in a civil action or administrative hearing involving an alleged violation of the bill's provisions. This bill would establish a "whistleblower hotline" within the office of the Attorney General to receive telephone reports of violations of state or federal statutes, rules, or regulations, or fiduciary responsibilities, by an employer. The bill would require the Attorney General to refer calls received on this hotline to the appropriate government authority, as specified.

This bill would also require an employer to display, as specified, a list of an employee's rights under whistleblower laws, including the telephone number of the hotline created by the bill.

Because a violation of the provisions added by this bill would constitute a misdemeanor, this bill would create a state-mandated local program.



The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that unlawful activities of private corporations may result in damages not only to the corporation and its shareholders and investors, but also to employees of the corporation and the public at large. The damages caused by unlawful activities may be prevented by the early detection of corporate wrongdoing. The employees of a corporation are in a unique position to report corporate wrongdoing to an appropriate government or law enforcement agency.

The Legislature finds and declares that it is the public policy of the State of California to encourage employees to notify an appropriate government or law enforcement agency when they have reason to believe their employer is violating laws enacted for the protection of corporate shareholders, investors, employees, and the general public.

It is the intent of the Legislature to protect employees who refuse to act at the direction of their employer or refuse to participate in activities of an employer that would result in a violation of law.

SEC. 2. Section 1102.5 of the Labor Code is amended to read:

1102.5. (a) An employer may not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.

(b) An employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or

a violation or noncompliance with a state or federal rule or regulation.

(c) An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.

(d) An employer may not retaliate against an employee for having exercised his or her rights under subdivision (a), (b), or (c) in any former employment.

(e) A report made by an employee of a government agency to his or her employer is a disclosure of information to a government or law enforcement agency pursuant to subdivisions (a) and (b).

(f) In addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.

(g) This section does not apply to rules, regulations, or policies which implement, or to actions by employers against employees who violate, the confidentiality of the lawyer-client privilege of Article 3 (commencing with Section 950), the physician-patient privilege of Article 6 (commencing with Section 990) of Chapter 4 of Division 8 of the Evidence Code, or trade secret information.

SEC. 3. Section 1102.6 is added to the Labor Code, to read:

1102.6. In a civil action or administrative proceeding brought pursuant to Section 1102.5, once it has been demonstrated by a preponderance of the evidence that an activity proscribed by Section 1102.5 was a contributing factor in the alleged prohibited action against the employee, the employer shall have the burden of proof to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in activities protected by Section 1102.5.

SEC. 4. Section 1102.7 is added to the Labor Code, to read:

1102.7. (a) The office of the Attorney General shall maintain a whistleblower hotline to receive calls from persons who have information regarding possible violations of state or federal statutes, rules, or regulations, or violations of fiduciary responsibility by a corporation or limited liability company to its shareholders, investors, or employees.



(b) The Attorney General shall refer calls received on the whistleblower hotline to the appropriate government authority for review and possible investigation.

(c) During the initial review of a call received pursuant to subdivision (a), the Attorney General or appropriate government agency shall hold in confidence information disclosed through the whistleblower hotline, including the identity of the caller disclosing the information and the employer identified by the caller.

(d) A call made to the whistleblower hotline pursuant to subdivision (a) or its referral to an appropriate agency under subdivision (b) may not be the sole basis for a time period under a statute of limitation to commence. This section does not change existing law relating to statutes of limitation.

SEC. 5. Section 1102.8 is added to the Labor Code, to read:

1102.8. (a) An employer shall prominently display in lettering larger than size 14 pica type a list of employees' rights and responsibilities under the whistleblower laws, including the telephone number of the whistleblower hotline described in Section 1102.7.

(b) Any state agency required to post a notice pursuant to Section 8548.2 of the Government Code or subdivision (b) of Section 6128 of the Penal Code shall be deemed in compliance with the posting requirement set forth in subdivision (a) if the notice posted pursuant to Section 8548.2 of the Government Code or subdivision (b) of Section 6128 of the Penal Code also contains the whistleblower hotline number described in Section 1102.7.

SEC. 7. Section 1106 of the Labor Code is amended to read:

1106. For purposes of Sections 1102.5, 1102.6, 1102.7, 1102.8, 1104, and 1105, "employee" includes, but is not limited to, any individual employed by the state or any subdivision thereof, any county, city, city and county, including any charter city or county, and any school district, community college district, municipal or public corporation, political subdivision, or the University of California.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty

for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Approved _____, 2003

Governor

